

LAW OFFICES OF DALE K. GALIPO
Dale K. Galipo (Bar No. 144074)
dalekgalipo@yahoo.com
Eric Valenzuela (Bar No. 284500)
evalenzuela@galipolaw.com
21800 Burbank Boulevard, Suite 310
Woodland Hills, California 91367
Telephone: (818) 347-3333
Facsimile: (818) 347-4118

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

J.F., a minor, by and through her
Guardian Ad Litem, LIZ FRANCO, et
al.,

Plaintiffs,

vs.

CITY OF WOODLAKE, et al.,

Defendants.

No. 1:23-CV-01569-JLT-BAM

**PLAINTIFFS SYNOPSIS OF DISCOVERY
DISPUTE**

**U.S. Magistrate Judge: Barbara A.
McAuliffe**

Date: October 9, 2024

Time: 10:00 a.m.

Courtroom: 8

Pursuant to the Court's Order [Doc. #28], Plaintiffs submit the following 2-page synopsis:

Victor Melendez was fatally shot by City of Woodlake police officers Chris Kaious and Juan Gonzales on December 17, 2022 (almost 2 years ago). No criminal charges have been filed against any of the Defendant Officers. Plaintiffs have noticed the depositions of the Defendant Officers. The defense will not produce the officers for their depositions because of the ongoing investigation by the California Department of Justice ("CA DOJ") their Fifth Amendment rights. Criminal investigations into officer-involved fatal shootings are a matter of course mandated

1 by law pursuant to California Assembly Bill 1506, which requires the CA DOJ to
2 investigate all incidents of an officer-involved shooting resulting in the death of an
3 unarmed civilian in the state, as was the case here. A court has discretion to stay civil
4 proceedings in favor of criminal proceedings “when the interests of justice seem to
5 require such action.” *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th
6 Cir. 1995) (citation omitted). In deciding whether to grant or deny a stay, a court must
7 first evaluate “the extent to which the defendant’s [F]ifth [A]mendment rights are
8 implicated.” *Id.* (quoting *Fed Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902
9 (9th Cir. 1989)).

10 In addition, a court considers the following factors: (1) the interest of the
11 plaintiffs in proceeding expeditiously with this litigation or any particular aspect of
12 it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any
13 particular aspect of the proceedings may impose on defendants; (3) the convenience
14 of the court in the management of its cases, and the efficient use of judicial resources;
15 (4) the interests of persons not parties to the civil litigation; and (5) the interest of the
16 public in the pending civil and criminal litigation. *Id.* at 324-25 (quoting *Molinaro*,
17 889 F.2d at 903). Courts employ the *Keating* analysis even when the party seeking
18 the stay has not been indicted. See *Molinaro*, 889 F.2d at 903. Applying the *Keating*
19 factors, the Court should find that Defendants have not met their burden to show a
20 stay is warranted. “While a defendant in a criminal case may constitutionally assert
21 [his] Fifth Amendment rights with no adverse consequence, a trier of fact in a civil
22 case may draw an adverse inference from invocation of the Fifth Amendment.” *Doe*
23 *ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1264 (9th Cir. 2000). Nevertheless,
24 “[t]he Constitution does not ordinarily require a stay of civil proceedings pending the
25 outcome of criminal proceedings.” *Keating*, 45 F.3d at 324. Indeed, “[a] defendant
26 has no absolute right not to be forced to choose between testifying in a civil matter
27 and asserting his Fifth Amendment privilege.” *Id.* at 326. Although there may be “a
28 strong case in favor of a stay after a grand jury returns a criminal indictment and

1 where there is a large degree of overlap between the facts involved in both [civil and
2 criminal] cases,” *Roberts v. Brown*, No. 13-CV-07461-ODW, 2014 WL 3503094, at
3 *2 (C.D. Cal. July 14, 2014), “the case for staying civil proceedings is a far weaker
4 one when no indictment has been returned, and no Fifth Amendment privilege is
5 threatened.” *Molinaro*, 889 F.3d at 903.

6 Even if there is a significant overlap between the allegations in Plaintiffs’
7 Complaint and any criminal charges that the officers might face should they be
8 indicted. However, the officers have not been indicted, nor have Defendants alleged
9 that criminal charges are imminent, there is no evidence that the CA DOJ has made
10 any adverse findings against the officers or that the agency intends to charge them.
11 Courts in this district have denied stays in the instant procedural posture, where no
12 indictment has been filed and there are no indications that criminal charges are
13 imminent. See, e.g., *A.H. v. Cnty. of San Bernardino*, No. EDCV 23-1028-JGB-SHK,
14 2023 WL 9646224 (C.D. Cal. Dec. 28, 2023); *Vargas v. Cnty. of Los Angeles*, No.
15 19-CV-3279-PSG-AS, 2019 WL 6655269, at *3 (C.D. Cal. July 10, 2019); *Herd v.*
16 *Cnty. of San Bernardino*, No. EDCV 17- 02545-AB-SP, 2018 WL 5816175, at *2
17 (C.D. Cal. Sept. 17, 2018); *Est. of Morad v. City of Long Beach*, No. 16-CV-06785-
18 MWFA-JW, 2017 WL 5187826, at *9 (C.D. Cal. Apr. 28, 2017); *Lindsey v. City of*
19 *Pasadena*, No. 16-CV-08602-SJO-RAO, 2017 WL 5891097, at *3 (C.D. Cal. March
20 24, 2017); *Perez v. Cnty. of Los Angeles*, No. 15-CV-09585-SJO-FFM, 2016 WL
21 10576622, at *3 (C.D. Cal. May 3, 2016). “Given that the CA DOJ automatically
22 investigates every one of these incidents, Defendants effectively ask the Court to
23 ‘create a blanket rule requiring a stay of civil proceedings where there is a mere
24 possibility of criminal charges against the involved officers.’” *A.H.*, 2023 WL
25 9646224, at *4 (quoting *Herd*, 2018 WL 5816175, at *2). Defendants’ position has
26 “no basis in either law or reason,” *Perez*, 2016 WL 10576622, at *3, and therefore is
27 untenable. Any Fifth Amendment interest, weighed against the additional *Keating*
28 factors, do not warrant a stay of discovery. *Vargas*, 2019 WL 6655269, at *2-3.

1 Dated: October 4, 2024

LAW OFFICES OF DALE K. GALIPO

2
3 /s/ Eric Valenzuela

4 Eric Valenzuela

5 Attorney for Plaintiffs